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THE ANDHRA PRADESH GAZETTE

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PART II - MISCELLANEOUS NOTIFICATIOSN OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Roc.No. 1013/ADR/SO/2005 **Dt. 15/09/2017**

NOTIFICATION No. 26 /SO/2017

ALTERNATIVE DISPUTE RESOLUTION AND MEDIATION RULES, 2017

OFFICE OF THE MEDIATION AND ARBITRATION CENTRE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH 2nd FLOOR, 'C' BLOCK, HIGH COURT PREMISES, OFF.PH.No.040-23446758/9

ALTERNATIVE DISPUTE RESOLUTION AND MEDIATION RULES, 2017
HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

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ALTERNATIVE DISPUTE RESOLUTION AND MEDIATION RULES, 2017

High Court of Judicature at Hyderabad

For the State of Telangana and the State of Andhra Pradesh

Whereas it is expedient to amend, consolidate and bring upto date the Civil Procedure Alternative Dispute Resolution and Mediation Rules 2005 in accordance with the Supreme Court Judgments and incorporate therein the Orders, Notifications and Administrative instructions issued from time to time by the Government and the High Court.

Now, therefore, in exercise of the powers conferred by Article 227 of the Constitution of India and Section 126 of The Code of Civil Procedure 1908 and Section 477 of the Code of Criminal Procedure 1973 and all other powers hereunto enabling, the High Court of Judicature at Hyderabad hereby makes the following Rules for the guidance of Subordinate Courts and Tribunals in the State of Telangana and the State of Andhra Pradesh.

PRELIMINARY

1. Title and Commencement: —

(1) These Rules shall be called the Alternative Dispute Resolution and Mediation Rules, 2017.

(2) These Rules shall come into force from the date of publication in the Official Gazette.

2. Definitions : —

In these Rules, unless the context otherwise requires, —

(a) 'Alternative Dispute Resolution' includes Arbitration, Concilation, Judicial Settlement, Lok Adalat and Mediation;

(b) 'Board of Governors' means the Committee of Judges nor nominated by the Chief Justice of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh;

(c) 'Code' means the Code of Civil Procedure, 1908 (5 of 1908) as amended from time to time.

(d) 'High Court' means the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

PART- I

ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

3. Procedure for directing parties to opt for alternative modes of settlement in Suits suitable for Alternative Dispute Resolution; and reading Clauses (c) and (d) of Section 89 (2) of the Code : —

(1) (i) the Court shall, after recording admissions and denials at the first hearing of the suit under Rule 1 of Order X, Code of Civil Procedure 1908, direct the parties

to opt for one of the modes of settlement of dispute outside the Court as specified in clauses (a) to (d) of sub section 1 of Section 89, Code of Civil Procedure 1908, r/w. Rule 1A of Order X and on their failure the Court shall ascertain consent for Arbitration or Conciliation; if there is no consent the Court shall select Lok Adalat for simple cases and Mediation for all other cases, reserving reference to a Judge assisted settlement (Judicial Settlement, in accordance with the procedure as may be prescribed) only in exceptional / Special cases.

(ii) it is not necessary for the Court, before referring the parties to an Alternative Dispute Resolution process to formulate or re- formulate the terms of a possible settlement. It is sufficient if the Court describes the nature of dispute (in a sentence or two) and makes the reference.

(iii) Subject to clause (i) above the Court may resort to Alternative Dispute Resolution Processes at any stage of the proceedings.

(2) The following categories of Suits and Cases of civil nature, which can be subjected to just exceptions or additions, are normally considered to be not suitable for Alternative Dispute Resolution process having regard to their nature :

(i) representative suits. (ii) disputes relating to election to public offices.

(ii) cases involving grant of authority by the court after enquiry, as for example, suits for grant of probate or letters of administration.

(iv) cases involving serious and specific allegations of fraud, fabrication of documents, forgery, impersonation, coercion etc.

(v) cases requiring protection of courts, as for example, claims against minors, deities and mentally challenged and suits for declaration of title against government.

(3) In all other Suits reference to Alternative Dispute Resolution process is a must and the Court shall briefly record reasons for not resorting to any of the Alternative Dispute Resolution processes.

(4) The words 'Judicial Settlement' and 'Mediation' in Clauses (c) and (d) of Section 89(2) of the Code shall have to be interchanged to read as under:

(i) (c) for mediation, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(ii) (d) for Judicial Settlement, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.

4. Persons authorized to take decision for the Union of India, State Government and others : —

(1) For the purpose of Rule 3, the Union of India or the Government of a State or Union Territory, all local authorities, all Public Sector Undertakings, all statutory corporations and all public authorities shall nominate a person or persons or group of persons who are authorized to take a final decision as to the mode of Alternative Dispute Resolution

in which it proposes to opt in the event of direction by the Court under Section 89 of the Code and such nomination shall be communicated to the High Court within the period of three months from the date of commencement of these Rules and the High Court shall notify all the subordinate Courts in this behalf as soon as such nomination is received from such Government or authorities.

(2) Where such person or persons or group of persons have not been nominated as aforesaid, such party as referred to in Sub Rule (1) shall, if it is a plaintiff, file along with the plaint or if it is a defendant file, along with or before the filing of the written statement, a memo into the Court, nominating a person or persons or group of persons who is or are authorized to take a final decision as to the mode of Alternative Dispute Resolution, which the party prefers to adopt in the event of the Court directing the party to opt for one or other mode of Alternative Dispute Resolution.

5. Court to give guidance to parties while giving direction to opt : —

Before directing the parties to exercise option under Rule 3, the Court shall give such guidance as it deems fit to the parties, by drawing their attention to relevant factors which parties will have to take into account, before they exercise their option as to the particular mode of settlement, namely :

(i) that it will be to the advantage of the parties, so far as time and expense are concerned, to opt for one or other of these modes of settlement referred to in Section 89 of the Code rather than seek a trial on the disputes arising in the suit;

(ii) the difference between the different modes of settlement as explained below:- Settlement by 'Arbitration' means the process by which an Arbitrator appointed by parties or by the Court or by the High Court Arbitration Centre in accordance with The Arbitration Centre (Domestic and International), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh Rules, 2015, as the case may be, adjudicates the disputes between the parties to the suit and passes an award by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they refer to arbitration.

Settlement by 'Conciliation' means the process by which a conciliator who is appointed by parties or by the Court, as the case may be, conciliates the disputes between the parties to the suit by the application of the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) in so far as they relate to conciliation and in particular, in exercise of his powers under section 67 and 72 of that Act, by making proposals for a settlement of the dispute and by formulating or reformulating the terms of a possible settlement; and has a greater role than a mediator.

Settlement by 'Mediation' means the process by which a mediator appointed by the Coordinator of the Mediation Centre or by the Court in exceptional cases, as the case may be, mediates the dispute between the parties to the suit by the application of the provisions of these Rules, and in particular, by facilitating discussion between the parties directly or by communicating with each other through the mediator, by assisting parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise, generating options in an attempt to solve the dispute and emphasizing that it is the parties own responsibility for making decisions which affect them.

Settlement in 'Lok Adalat' means settlement by Lok Adalat as contemplated by the Legal Services Authorities Act, 1987.

"Judicial settlement" means the process by which the Court will effect a compromise between the parties by following such procedure as may be prescribed.

6. Procedure to be adopted by the Court: —

(1) The procedure to be adopted by a court under section 89 of the Code is as under:

(i) When the pleadings are complete, before framing issues, the court shall fix a preliminary hearing for appearance of parties. The court should acquaint itself with the facts of the case and the nature of the dispute between the parties.

(ii) The court should first consider whether the case falls under any of the categories of the cases which are required to be tried by courts and not fit to be referred to any Alternative Dispute Resolution processes. If it finds the case falls under any excluded category, it should record a brief order referring to the nature of the case and why it is not fit for reference to Alternative Dispute Resolution processes. It will then proceed with the framing of issues and trial.

(iii) In other cases (that is, in cases which can be referred to Alternative Dispute Resolution processes) the court should explain the choice of five Alternative Dispute Resolution processes to the parties to enable them to exercise their option.

(iv) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is an adjudicatory process by a chosen private forum and reference to arbitration will permanently take the suit outside the ambit of the court. The parties should also be informed that the cost of arbitration will have to be borne by them. Only if both parties agree for arbitration, the matter should be referred to arbitration.

(v) If the parties are not agreeable for arbitration, the court should ascertain whether the parties are agreeable for reference to conciliation which will be governed by the provisions of the Arbitration and Conciliation Act 1996. If all the parties agree for reference to conciliation and agree upon the conciliator/s, the court can refer the matter to conciliation in accordance with Section 64 of the Arbitration and Conciliation Act 1996.

(vi) If parties are not agreeable for arbitration or conciliation, the court should, keeping in view the preferences/options of parties, refer the matter to any one of the other three Alternative Dispute Resolution processes : (a) Lok Adalat; (b) mediation by a neutral third party facilitator or mediator; and (c) a judicial settlement, where a Judge assists the parties to arrive at a settlement.

(vii) If the case is simple which may be completed in a single sitting, or cases relating to a matter where the legal principles are clearly settled, the court may refer the matter to Lok Adalat. In case where the questions are complicated or cases which may require several rounds of negotiations, the court may refer the matter to mediation. Where the parties opt for the guidance of a Judge to arrive at a settlement, the court shall follow such procedure as may be prescribed.

(viii) If the reference to the Alternative Dispute Resolution process fails, on receipt of the Report of the Alternative Dispute Resolution Forum, the court shall proceed with hearing of the case in accordance with law.

(ix) Failure to arrive at a settlement would not preclude the Court from making fresh reference of the case for Alternative Dispute Resolution.

(x) if the settlement includes disputes which are not the subject matter of the suit, the court may direct that the same will be governed by Section 74 of the Arbitration and Conciliation Act 1996 (if it is a Conciliation Settlement) or Section 21 of the Legal Services Authorities Act, 1987 (if it is a settlement by a Lok Adalat or by mediation which is a deemed Lok Adalat).

(xi) If any term of the settlement is ex facie illegal or unenforceable, the court should draw the attention of parties thereto to avoid further litigations and disputes about executability.

(2) The Court should also bear in mind the following consequential aspects, while giving effect to Section 89 of the Code :

(i) If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent. Nothing further need be stated in the order sheet.

(ii) If the reference is to any other Alternative Dispute Resolution process, the court should briefly record that having regard to the nature of dispute, the case deserves to be referred to Lok Adalat, or mediation or judicial settlement, as the case may be. There is no need for an elaborate order for making the reference.

(iii) If the court refers the matter to an Alternative Dispute Resolution process (other than Arbitration), it should keep track of the matter by fixing a hearing date for the Alternative Dispute Resolution Report.

(iv) Normally the court should not send the original record of the case when referring the matter for an Alternative Dispute Resolution forum. However if the case is referred to a Court annexed Mediation Centre which is under the exclusive control and supervision of a Coordinator appointed by the High Court, the original file may be made available wherever necessary. In all other cases it is sufficient to send only the referral order to the Alternative Dispute Resolution Forum.

(3) (i) No next friend or guardian for the Plaintiff/Defendant shall without the leave of the Court, expressly recorded in the proceedings of the Court opt for any one of the modes of Alternative Dispute Resolution nor shall enter into any settlement on behalf of a minor person under disability with reference to the suit in which he acts as mere friend or guardian.

(ii) Where an application is made to the Court for leave to enter into a settlement initiated into the Alternative Dispute Resolution proceedings on behalf of a minor or other person under disability and such minor or other person under disability is represented by Counsel or pleader, the counsel or pleader shall file a certificate along with the said application to the effect that the settlement is, in his opinion, for the benefit of the minor or other person under disability. The decree of the Court based on the settlement to which the minor or other person under disability is a party, shall refer to the sanction of the Court thereto and shall set out the terms of the settlement.

7. Applicability of these Rules : —

(1) The provisions of these rules may be applied, to Proceedings before the Courts, including Family Courts constituted under the Family Courts Act (66 of 1984) while dealing with matrimonial, maintenance and child custody disputes, wherever necessary, in addition to the rules framed under the Family Courts Act (66 of 1984), and, to Compoundable Criminal Cases wherever applicable.

(2) Tribunals may refer cases of civil nature to any of the suitable Alternative Dispute Resolution process in accordance with the provisions of these Rules to the extent applicable or by following such procedure as they think fit.

8. Training in alternative methods of resolution of disputes : —

(1) Subject to requirement the High Court shall take steps to conduct Mediation training courses for the persons having required qualifications as per Rule 12 of these RuLes and, for other Alternative Dispute Resolution mechanisms by requesting bodies recognized by the High Court or the Universities imparting legal education or retired faculty members or other persons who, according to the High Court are well versed in the techniques of other alternative methods of resolution of dispute, to conduct training courses for Lawyers, Judicial Officers and others as per the eligibility prescribed by the High Court.

(2) The High Court shall nominate a Committee of Judges, for the purpose referred to in Sub Rule (1) and for the purpose of preparing rules of procedure for Alternative Dispute Resolution to be used by the Courts in the State as well as by the Arbitrators, Conciliators, Mediators and for Judicial Settlement.

(3) The High Court and the District Courts shall periodically conduct seminars, workshops and Awareness Programmes on the subject of Alternative Dispute Resolution procedures throughout the State or States over which the High Court has jurisdiction with a view to bring awareness of such procedures and to impart training to lawyers, Judicial Officers and others.

PART II

MEDIATION

9. Referring Compoundable Criminal Cases : —

Criminal courts dealing with cases under Section 498-A of the IPC should, at any stage and particularly, before they take up the case for hearing, refer the parties to Mediation if they feel that there exist elements of settlement and both the parties are willing. Other Compoundable Criminal Cases may be referred to Mediation, with the consent of parties, at any stage of the proceedings.

10. Appointment of Mediator : —

(1) In a Court annexed mediation, the Coordinator of the mediation centre shall appoint a mediator from the panel of mediators, as he may deem fit.

(2) In exceptional cases, the court may also appoint mediator who is not necessarily from the panel of Mediators referred to in Rule 11 nor bear the qualifications referred to in Rule 12 but should not be a person who suffers from the disqualifications referred to in Rule 13.

11. Panel of Mediators : —

(1) The High Court Mediation Centre, with the approval of the Board of Governors, shall empanel only those persons as mediators who have necessary qualifications as indicated in Rule 12 and a list of such mediators empanelled shall be maintained for all the Mediation Centres.

(2) The District Court and all the Mediation Centres shall maintain a list of empanelled Mediators of that district and centre respectively, approved by the Board of Governors High Court Mediation Centre.

(3) All the mediators as empanelled under Sub Rule (1) shall normally be on the panel for a period of 3 years from the date of appointment and further extension of their tenure shall be at the discretion of Board of Governors High Court Mediation Centre.

12. Qualifications of persons to be empanelled under Rule 11: —

The following persons shall be treated as qualified and eligible for being enlisted in the panel of mediators under Rule 11 namely :

(1) (i) Retired Judges of the Supreme Court of India,

(ii) Retired Judges of the High Court;

(iii) Retired District and Sessions Judges or retired Judges of the City Civil Courts or Courts of equivalent status;

(iv) In-service Judicial Officers; and

(2) Legal practitioners with atleast seven years' standing at the bar;

(3) Experts or other professionals with at least fifteen years' standing; or retired senior bureaucrats or retired senior executives;

(4) Institutions which are themselves experts in mediation and have been recognized as such by the High Court, provided the names of its members are approved by the High Court initially or whenever there is change in membership.

(5) The Mediator who have undergone training programme conducted in accordance with the curriculum approved by Mediation and Conciliation Project Committee of India (MCPC) shall alone be accredited as Mediator.

13. Disqualification of persons : —

The following persons shall be deemed to be disqualified for being empanelled as mediator:

(i) any person who has been adjudged as insolvent or is declared of Unsound mind.

(ii) or any person against whom criminal charges involving moral turpitude are framed by a Criminal Court and are pending; or

(iii) any person who has been convicted by a Criminal Court for any offence involving moral turpitude;

(iv) any person against whom disciplinary proceeding or charges relating to moral turpitude have been initiated by the appropriate disciplinary authority which are pending or have resulted in a punishment;

(v) such other categories of persons as may be notified by the High Court.

14. Venue for conducting mediation : —

Mediation proceedings shall be conducted at one or other of the following places:

(1) Mediation Centre;

(ii) Venue of the Lok Adalat or Permanent Lok Adalat;

(iii) Any place identified by the High Court;

(iv) Any place identified by the District Judge with the approval of the High Court within the Court precincts;

(V) Any other place as may be agreed upon by the parties subject to approval of the Court.

15. Preference: —

The Coordinator shall, while nominating any person from the panel of mediators referred to in Rule 11, consider his suitability for resolving the particular class of dispute involved in the case and shall give preference to those who have proven record of successful mediation or who have special qualification or experience in mediation.

Nomination to a mediation proceeding shall not be perceived as a right by mediators. Such nomination shall be at the discretion of the Coordinator of the Mediation Centre.

16. Duty of mediator to disclose certain facts : —

(1) When a person is approached in connection with his possible appointment as a mediator, the person shall disclose in writing to the parties, any circumstances likely to give rise to a justifiable doubt as to his independence or impartiality.

(2) Every mediator shall, from the time of his appointment and throughout the continuance of the mediation proceedings, without delay disclose to the parties in writing, about the existence of any of the circumstances referred to in Sub Rule (1).

17. Cancellation of appointment: —

Upon information furnished by the mediator under Rule 16 or upon any other information received from the parties or other persons, if the Coordinator of the Mediation Centre, is satisfied, that the said information has raised a justifiable doubt as to the mediator's independence or impartiality, the Coordinator may withdraw/cancel the appointment and replace him by another mediator.

18. Removal or deletion from panel:—

A person whose name is placed in the panel referred to in Rule 11 may be removed or his name be deleted from the said panel, by the Board of Governors High Court Mediation Centre. If:

(i) he resigns or withdraws his name from the panel for any reason,

(ii) he is declared insolvent or is declared of unsound mind;

(iii) he is a person against whom criminal charges involving moral turpitude are framed by a criminal court and are pending;

(iv) he is a person who has been convicted by a criminal court for any offence involving moral turpitude;

(v) he is a person against whom disciplinary proceedings on charges relating to moral turpitude have been initiated by appropriate disciplinary authority which are pending or have resulted in a punishment;

(vi) he exhibits or displays conduct, during the continuance of the mediation proceedings, which is unbecoming of a mediator;

(vii) upon receipt of information, if it is satisfied, after conducting such inquiry as it deems fit, is of the view, that it is not possible or desirable to continue the name of that person in the panel;

Provided that, before removing or deleting his name, under clauses (vi) and (vii), the Board of Governors High Court Mediation Centre may hear the mediator whose name is proposed to be removed or deleted from the panel and pass a reasoned order.

19. Mediation Process : —

The mediation process will comprise of reference as well as the steps taken by the mediator to facilitate the settlement of a referred matter by following the structure usually followed, including but not limited to introduction and opening statement, joint session, separate session(s) and closing.

20. Mediator not bound by Evidence Act, 1872 or Code of Civil Procedure, 1908 or Code of Criminal Procedure 1973 : —

The mediator shall not be bound by the Code of Civil Procedure, 1908 or Code of Criminal Procedure, 1973 or the Evidence Act, 1872 but shall be guided by principles of fairness and justice, having regard to the rights and obligations of the parties, usages of trade, if any, and the nature of the dispute.

21. Attendance / Non-attendance of parties at sessions or meetings on due dates: —

(1) While referring a case to mediation, the Court shall direct the parties to attend before the Coordinator of the Mediation Centre on a fixed date and time.

(2) The parties shall be present personally or may be represented by their counsel or power of attorney holders at the meetings or sessions notified by the mediator:

Provided that mediation proceedings may also be conducted by Audio-Video electronic means where the party is unable to attend personally,

(3) If a party to a Suit fails to attend before the Coordinator or to a session or a meeting notified by the mediator, and upon information from the Coordinator of the Mediation Centre if the Court finds that a party is absenting himself without sufficient reason, the Court may take action against the said party by imposition of costs and may proceed to dispose of the Suit in one of the modes directed in that behalf by Order IX of the Code or make such other order as it thinks fit treating the absence as non appearance before the Court.

(4) The parties not resident in India, may be represented by their counsel or power of attorney holders at the sessions or meetings.

(5) Where the parties are represented by power of attorney, such power of attorney shall have authority to settle and compromise.

22. Administrative Assistance : —

in order to facilitate the conduct of mediation proceedings, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

23. Offer of settlement by parties : —

(1) any party to the suit may, ‘without prejudice’, offer a settlement to the other party at any stage of the proceedings, with notice to the mediator.

(2) any party to the suit may make, ‘without prejudice’ an offer, to the other party at any stage of the proceedings, with notice to the mediator.

24 . Role of Mediator : —

The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decisions which effect them; he shall not impose any terms of settlement on the parties.

25. Parties alone responsible for taking decision : —

The parties shall be made to understand that the mediator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the mediator give any warranty/assurance that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.

26. Time limit for completion of mediation : —

On the expiry of Ninety days from the date fixed by the Court for the first appearance of the parties before the Coordinator, the mediation shall stand terminated unless the court, which referred the matter, either suo-moto, or upon request by the Coordinator, and upon hearing all the parties, is of the view that extension of time is necessary or may be useful; but such extension shall not be beyond a further period of thirty days.

27. Parties to act in good faith : —

All parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute(s), if possible.

28. Confidentiality, disclosure and inadmissibility of information : —

(1) when a mediator receives factual information concerning the dispute from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate.

Provided that, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose the information to the other party.

(2) Receipt or perusal, or preparation of records, reports or other documents by the mediator, or receipt of information orally by the mediator while serving in that capacity, shall be confidential and the mediator shall not be compelled to divulge information regarding the documents nor in regard to the oral information nor as to what transpire during the mediation.

(3) Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any proceedings, as to :

(a) views expressed by a party in the course of the mediation proceedings;

(b) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;

(c) proposals made or views expressed by the mediator;

(d) admission made by a party in the course of mediation proceedings;

(e) the fact that a party had or had not indicated willingness to accept a proposal;

(4) There shall be no stenographic or audio or video recording of the mediation proceedings.

(5) Mediator may maintain personal record regarding dates fixed by him and the progress of the mediation for his personal reference in the capacity of a Mediator.

29. Privacy : —

The mediation sessions shall be conducted in complete privacy; only the concerned parties or their counsels or power of attorney holders can attend, other persons may attend only with the consent of the parties and permission of the mediator.

30. Immunity : —

No mediator shall be held liable for anything bonafidely done or omitted to be done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of Law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

31. Communication between Mediator and the Court: —

(1) In order to preserve the confidence of parties in the Court and the neutrality of the mediator, there should be no communication between the mediator and the court, except as stated in Sub Rule (2) and (3) of this Rule.

(2) Communication between the mediator and the Court shall be through the Coordinator of the Mediation Centre and in writing. Copies of the same may be given to the parties or their counsel or power of attorney.

(3) Communication between the mediator and the Court shall be limited to the following aspects only:

(i) about the failure of party to attend;

(ii) regarding his assessment that the case is not suited for settlement through mediation;

(iii) that the parties have settled the dispute or disputes;

32. Settlement Agreement and Report: —

(1) Where a lawful agreement is reached between the parties the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsel have represented the parties, the mediator may obtain his signature also on the settlement agreement.

(2) The settlement agreement signed by the parties along with his report shall be submitted by the Mediator to the Coordinator, Mediation Centre, who shall, with a covering letter signed by him, forward the same to the Court from which the reference has been received.

(3) A copy of the settlement agreement shall be given to each of the party duly certifying them to be true by the Coordinator of the Mediation Centre.

(4) Where no agreement is arrived at between the parties or where the mediator is of the view that no settlement is possible, he shall report the same in writing to the Coordinator, Mediation Centre, before the time limit stated in Rule 26, who shall, with a covering letter signed by him forward the same to the Court from which the reference has been received.

Provided that wherever the mediation fails, the mediator shall not express any opinion on the merits or demerits of the matter, conduct of the parties, the nature of process or causes which led to failure of mediation.

(5) While forwarding the case back again to the Court the Coordinator of the Mediation Centre shall direct the parties to appear before the Court on a specific date.

(6) Where a case is referred to Mediation the Court shall not take up the said case until a report is received from the Coordinator of the Mediation Centre.

(7) Settlement Agreement signed by the parties or their Power of Attorney holder is non retractable, final and binding.

33. Recording settlement and passing Decree / Order / Judgment: —

(1) If there is a settlement, in a case of Civil nature the court shall examine the settlement agreement and make a decree/order in terms of it, applying the principles of Order 23 Rule 3 of the Civil Procedure Code 1908 and, in Compoundable Criminal Cases the Court shall refer to the settlement agreement in its Judgment.

(2) If the settlement disposes of only certain issues arising in a suit, and

(i) if the issues are severable from other issues and if a decree could be passed to the extent of the settlement covered by those issues, the Court may pass a decree straight away in accordance with the settlement on those issues without waiting for a decision of the Court on the other issues which are not settled,

(ii) if the issues are not severable, the Court shall wait for a decision of the Court on the other issues which are not settled.

(3) Every settlement agreement entered into through the process of mediation shall be deemed to be a Decree of a Civil Court.

34. Fee of mediator and costs : —

(1) Mediators shall be paid honorarium as prescribed by Mediation and Conciliation Project Committee of India / Board of Governors High Court Mediation Centre. However, in exceptional cases the Court may fix consolidated amount as honorarium to the Court nominated mediator/mediators.

(2) All other incidental costs relating to attending to the Mediation Sessions by the parties and persons on their behalf, producing documents and other material if any for the purpose of Mediation Proceedings shall be borne by the respective parties.

35. Ethics to be followed by Mediator and Consequences of breach thereof:—

(1) The mediator shall follow and observe these Rules strictly and with due diligence;

(i) not carry on any activity or conduct which could reasonably be considered as a conduct unbecoming of a mediator.

(ii) uphold the integrity and fairness of the mediation process.

(iii) ensure that the parties involved in the mediation and fairly informed and have an adequate understanding of the procedural aspects of the mediation process.

(iv) satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner.

(v) disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias.

(vi) avoid, while communicating with the parties, any impropriety or appearance of impropriety.

(vii) be faithful to the relationship of trust and confidentiality imposed in the office of mediator.

(viii) conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law.

(ix) where the mediator is an advocate, he shall not appear for any of the parties in respect of the dispute which he had mediated.

(x) mediators have a duty to remain neutral throughout the mediation.

(xi) mediators must respect the voluntary nature of mediation and must recognize the rights of the parties to withdraw from the mediation at any stage.

(xii) mediator has a duty to encourage the parties to make their own decisions both individually and collectively about the resolution of the dispute, rather than imposing his own ideas on the parties as self determination is the essence of the mediation process.

(xiii) settlement of dispute must be based on informed consent.

(xiv) mediator must refrain from promises or guarantee of results.

(2) It shall be open to the High Court Mediation Centre to take such action as may be appropriate with the approval of the Board of Governors if the mediator violates any code of conduct expressed in Sub Rule (1) or behaves in a manner not expected of him as a Mediator.

36. Mediation Centres, Coordinators and Staff: —

(1) There shall be a Mediation Centre attached to every Court / Court Complex.

(2) To supervise and manage the day to day affairs of the Centre the office of Mediation Centre shall consist of a Coordinator and such Staff as may be appointed or deputed by the District Court / High Court.

37. Repeal: —

Chapter XX of Civil Rules of Practice and Circular Orders 1980 “Civil Procedure Alternative Dispute Resolution and Civil Procedure Mediation Rules 2005”, and Rule 9 of Chapter XXI of Civil Rules of Practice and Circular Orders 1980 “The Case Flow Management in Subordinates Courts Rules, 2012”, are hereby repealed.

CH. MANAVENDRANATH ROY,

15-09-2017. *Registrar General.*

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